

## CHAPTER 19

**PARTICULAR TRUSTEES****1. JUDICIAL TRUSTEES****Creation of judicial trustees**

- 19-01** NOTE 2. DELETE printed AND FOR THE REFERENCE TO *Civil Procedure* (2005), Vol.2, Section 6D, SUBSTITUTE *Civil Procedure* (2011), Vol.2, Section 6D (CD).

**The application**

- 19-04** AT THE END OF THE SECOND SENTENCE ADD: (or, if made in an existing claim, then by application notice in that claim).

NOTE 15. DELETE AND REPLACE BY: *Chancery Guide* (2009 edn) 25.32. This is consistent with CPR, Pt 8, r.8.1(b) and (6) since, although Practice Direction, Pt 8, Section B contains no reference to the 1896 Act, Judicial Trustees Rules 1983, r.3(1) provides for the application to be made by originating summons (or by summons or motion in a pending cause or matter) and so it follows that the Pt 8 procedure should be used, see Practice Direction, Pt 8, para. 3.3.

**Who may be appointed a judicial trustee**

- 19-05** NOTE 26. AT THE END ADD: Where it is proposed to appoint the Official Solicitor inquiries should first be made to his office for confirmation that he is prepared to act if appointed: *Chancery Guide* (6th edn, 2009) 25.33.

**Terms of appointment and remuneration**

- 19-06** NOTE 32. AT THE END ADD: See too *Chancery Guide* (2009 edn) 25.33.

NOTE 37. AT THE END ADD: See too *Chancery Guide* (2009 edn) 25.34.

**Administration by a judicial trustee**

- 19-07** NOTE 40. AT THE END ADD: See too *Chancery Guide* (2009 edn) 25.32.

## PARTICULAR TRUSTEES

**2. THE PUBLIC TRUSTEE****The Public Trustee**

**19-08** NOTE 44. DELETE printed AND FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.2, Section 6D, SUBSTITUTE *Civil Procedure* (2011), Vol.2, Section 6D (CD).

FIRST PARAGRAPH. DELETE THE FIFTH AND SIXTH SENTENCE AND REPLACE BY: The Public Trustee and the Official Solicitor to the Senior Courts have the same office, though they have independent statutory functions and the Public Trustee and the Official Solicitor are presently different persons (but the Public Trustee also heads the Court Funds Office which shares some corporate services with the office of the Public Trustee and Official Solicitor). The Public Trustee now accepts new trusts only on a “last resort” basis , broadly where there is no one else willing and able to act and an injustice to a vulnerable person would be caused if he did not act. In recent years the Public Trustee has retired from a large number of trusts and the role of the Public Trustee is significantly smaller than was formerly the case.

SECOND PARAGRAPH: DELETE THE FIRST AND SECOND SENTENCES AND REPLACE BY: The Public Trustee may exercise the functions of a deputy appointed by the Court of Protection.<sup>48</sup> This topic is outside the scope of this work.

**General powers**

**19-09** NOTE 51. DELETE AND REPLACE BY: The present Public Trustee is Mr Eddie Bloomfield.

*Trusts for religious or charitable purposes and security trusts*

**19-12** NOTE 66. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.2, para.6D–47, SUBSTITUTE *Civil Procedure* (2011), Vol.2, para.6D–50 (CD).

---

<sup>48</sup> Public Trustee and Administration of Funds Act 1986, s.3(1), as substituted by Mental Capacity Act 2005, s.67(1) and Sch.6, para.33.

## PARTICULAR TRUSTEES

**Direction that Public Trustee not to be appointed***Notice of appointment*

**19–18** NOTE 80. DELETE THE FIRST TWO SENTENCES AND REPLACE BY: CPR, Pt 8, r.8.1(2)(b) and (6); Practice Direction, Pt 8, Section B.

NOTE 81. DELETE AND REPLACE BY: CPR, Pt 8, r.8.1(2)(b) and (6); Practice Direction, Pt 8, Section B. Since the Public Trustee will not accept appointment except where an injustice to a vulnerable person is involved (see § 19–08), it will be normally be appropriate for the hearing to be in private.

**General provisions***Application to Court*

**19–29** NOTE 1. AT THE BEGINNING INSERT: Public Trustee Act 1906, s.10(1).

NOTE 2. DELETE THE FIRST SENTENCE AND REPLACE BY: Public Trustee Act 1906, s.10(2); and CPR, Pt 8, r.8.1(2)(b) and (6); Practice Direction, Pt 8, Section B.

*Investments*

**19–36** NOTE 11. AT THE END ADD: Court Funds (Amendment) Rules 2000 (SI 2000/2918); Court Funds (Amendment) Rules 2001 (SI 2001/703); Court Funds (Amendment) Rules 2003 (SI 2003/375); Court Funds (Amendment No.2) Rules 2003 (SI 2003/720); Court Funds (Amendment) Rules 2007 (SI 2007/729); Court Funds (Amendment No.2) Rules 2007 (SI 2007/2617); Court Funds (Amendment) Rules 2010 (SI 2010/172).

**Fees and expenses**

**19–45** NOTE 26. DELETE THE FIRST SENTENCE AND REPLACE BY: Public Trustee (Fees) Order 2008 (SI 2008/611).

## PARTICULAR TRUSTEES

**3. CUSTODIAN TRUSTEES****Who may be appointed a custodian trustee**

**19–47** NOTE 35. DELETE AND REPLACE BY: It is thought that this includes a reference to the Companies Act 1985 and the Companies Act 2006: see Interpretation Act 1978, ss.17 and 23, Companies Consolidation (Consequential Provisions) Act 1985, s.31 and Companies Act 2006, s.1297.

**4. TRUST CORPORATIONS****Meaning of trust corporation**

**19–52** NOTE 53. Supreme Court Act 1981 is renamed Senior Courts Act 1981 from October 1, 2009, see Constitutional Reform Act 2005, Sch.11, para.1 and Constitutional Reform Act 2005 (Commencement No.11) Order 2009 (SI 2009/1604).

© 2011 Thomson Reuters (Professional) UK Limited